



CITY OF NEW ORLEANS

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CITY CIVIL SERVICE COMMISSION

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MAYOR

Wednesday, February 28, 2018

Mr. Kevin Boshea
2955 Ridgelake Dr., Suite 207
Metairie, LA 70002

Re: **Alfred Moran VS.
Department of Police
Docket Number: 8524**

Dear Mr. Boshea:

Attached is the decision of the City Civil Service Commission in the matter of your appeal.

This is to notify you that, in accordance with the rules of the Court of Appeal, Fourth Circuit, State of Louisiana, the decision for the above captioned matter is this date - 2/28/2018 - filed in the Office of the Civil Service Commission at 1340 Poydras St. Suite 900, Orleans Tower, New Orleans, Louisiana.

If you choose to appeal this decision, such appeal must conform to the deadlines established by the Commission's Rules and Article X, 12(B) of the Louisiana Constitution. Further, any such appeal shall be taken in accordance with Article 2121 et. seq. of the Louisiana Code of Civil Procedure.

For the Commission,

A handwritten signature in blue ink that reads "Doddie K. Smith".

Doddie K. Smith
Chief, Management Services Division

cc: Michael S. Harrison
Isaka Williams
Brendan M. Greene
Alfred Moran
*
file

**CIVIL SERVICE COMMISSION
CITY OF NEW ORLEANS**

ALFRED MORAN vs. DEPARTMENT OF POLICE	DOCKET No.: 8524
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I. INTRODUCTION

Appellant, Alfred Moran, brings the instant appeal pursuant to Article X, §8(A) of the Louisiana Constitution and this Commission’s Rule II, §4.1 and asks the Commission to find that the Police Department for the City of New Orleans (hereinafter “NOPD”) did not have sufficient cause to discipline him. At all times relevant to the instant appeal, Appellant served as a Police Officer for NOPD and had permanent status as a classified employee.

A referee, appointed by the Commission, presided over four days of hearing during which both Parties had an opportunity to call witnesses and present evidence. The referee prepared a report and recommendation based upon the testimony and evidence in the record. The undersigned Commissioners have reviewed the transcript and exhibits from this hearing as well as the hearing examiner’s report. Based upon our review, we render the following judgment.

II. FACTUAL BACKGROUND

A. Alleged Misconduct

The allegations against Appellant stem from an interaction he had with an arrested subject during the late evening hours of September 30, 2015. (H.E. Exh. 1). In total, NOPD alleged that Appellant violated the following five rules/policies:

- Rule 2: Moral Conduct, Paragraph 6: Unauthorized Force;
- Rule 4: Performance of Duty, Paragraph 2: Instructions from an Authoritative Source, to Wit: Policy 300: Use of Force, Paragraph 300.7.2: Notification to Supervisors;
- Rule 4: Performance of Duty, Paragraph 2: Instructions from an Authoritative Source, to Wit: Chapter 41.3.10: Body-Worn Camera, Section Titled “Officer Responsibilities,” Paragraph 19;
- Rule 4: Performance of Duty, Paragraph 2: Instructions from an Authoritative Source, to Wit, Policy 453: Prisoner Transportation, Paragraph 453.0: Transportation; and
- Rule 2: Moral Conduct, Paragraph 3: Honesty and Truthfulness.

It was the final rule violation – Honesty and Truthfulness – that ultimately led NOPD to terminate Appellant’s employment. (H.E. Exh. 1). NOPD issued Appellant a series of other discipline related to the additional violations, but did not impose any sanctions beyond termination.

B. September 30, 2015

On the evening of September 30, 2015, two NOPD Officers, Kelli Dunnaway and William Jennings, were working a paid security detail in the French Quarter when they were flagged down by an employee of a local bar. The employee informed the Officers that an exceedingly drunk individual was causing a disturbance, harassing patrons and refusing repeated request to leave. (Tr. v. 3 at 214:22-215:3). Officers Dunnaway and Jennings were able to locate the drunk individual – later identified as Vincent Knapp – and asked him to leave the bar. Mr. Knapp initially complied with the request, but then immediately entered an adjacent bar and continued his

obnoxious behavior. At that point, Officers Jennings and Dunnaway placed Mr. Knapp under arrest for public intoxication, handcuffed him and brought him to the 8th District Police Station on Royal Street. *Id.* at 215:3-9. Once in the 8th District Station, either Officer Dunnaway or Officer Jennings secured Mr. Knapp to a bench by attaching the handcuffs on Mr. Knapp to a cable running from the top of the bench to the bottom. From this position, Mr. Knapp had a limited range of motion and could not stand up.

He could, however, lay down. And that is precisely what he did. The record does not reflect how long Mr. Knapp slept for, but he appears to be in various stages of unconsciousness (laid out on the bench or slumped over in a seated position) for the better part of an hour. (NOPD Exh. 5(d)).¹ Later in the evening, Officer Lewis Simmons brought another arrested subject to the 8th District Station and secured him to the same bench upon which Mr. Knapp had passed out. Officer Simmons was wearing an activated Body-Worn Camera (hereinafter “BWC”) at the time. After securing his prisoner to the bench, Officer Simmons detached his BWC and placed it on an island/counter no more than four or five feet away from the two men on the bench.²

At approximately 11:30 p.m., Appellant reported to his assignment at the 8th District Station where one of his responsibilities was to transport Mr. Knapp to central lock-up located on Tulane Avenue. Appellant’s first unenviable task of the evening was to rouse Mr. Knapp from his drunken stupor and prepare him for transport. He did this by slowly walking up to Mr. Knapp and stating; “Are you ready to get up? I am your ride.” (NOPD Exh. 4(a) at 20:06). Appellant was calm and measured in his initial interactions with Mr. Knapp and referred to Mr. Knapp as “my

¹ NOPD introduced several videos into evidence that captured the various interactions between Mr. Knapp and Appellant on the night of September 30, 2015. The videos in evidence as “NOPD Exhibits 5(a)-5(g) were captured by surveillance cameras situated throughout the 8th District Station. The camera that captured the video footage in NOPD Exhibit 5(d) was trained directly at the bench upon which Mr. Knapp was seated/passed out.

² Footage captured by Officer Simmons’s BWC is in evidence as NOPD Exhibits 4(a)-4(b).

friend.” As he slowly came out of his inebriated slumber, Mr. Knapp told Appellant, “don’t call me ‘friend’ bitch.” Appellant then placed his right hand on Mr. Knapp’s left shoulder and continued to speak to him in a calm manner but Mr. Knapp became more and more agitated. *Id.* at 20:20.

Finally, Appellant told Mr. Knapp, “I suggest you calm down.” To which Mr. Knapp responded, “I suggest you get your goddamned hand off me. Don’t lift me up you goddamned bitch.” *Id.* at 20:32. After making this statement, Mr. Knapp kicked Appellant with his right leg. (NOPD Exh. 5(d) at 11:41:58). Appellant responded to Mr. Knapp’s kick by quickly raising his right hand in an upward motion towards Mr. Knapp’s head making brief contact with the right side of Mr. Knapp’s face. *Id.* at 11:41:59. The back of Appellant’s left hand appears visible in both the security footage and BWC footage although it does not appear that Appellant’s fist was closed during this contact. The Commission believes that the strike is appropriately classified as a slap upside Mr. Knapp’s head.

Mr. Knapp was not deterred by Appellant’s slap and continued a stream of obscenities directed at Appellant and other Officers within the station. He repeatedly referred to Appellant as a “fucking bitch.” After a few more insults, Appellant got much closer to Mr. Knapp and struck him in the head again, this time in a downward, jabbing motion that the Commission describes as a punch. (NOPD Exh. 5(a) at 20:39). The force of the blow was sufficient to send Mr. Knapp’s head backwards into the bench which resulted in an audible “thump.”

Appellant was able to eventually untether Mr. Knapp from the bench and escort him to a marked NOPD vehicle for transportation to central lock-up. As Appellant prepared to leave the 8th District Station with Appellant, he activated his own BWC.³ During the brief walk from the

³ Video footage captured by Appellant’s BWC is in evidence as “NOPD Exh. 4(c).”

station to the waiting NOPD vehicle, Mr. Knapp lets lose a torrent of hateful words and phrases including repeated use of racial slurs and derogatory comments about African-Americans. Mr. Knapp is flanked by Officers Dunnaway and Jennings along with Appellant. The officers place Mr. Knapp in the back seat of a marked NOPD Ford Explorer, but none secure Mr. Knapp with a seat belt.⁴ Moments later, Officer Simmons placed his prisoner in the back seat of the NOPD Ford Explorer and sat in the front passenger seat.

Appellant drove the NOPD vehicle away from the 8th District Station towards Poydras Street. During the ride, Mr. Knapp continues spewing vile slurs and profanities. At one point, Mr. Knapp states “you hit me with my hands behind my back.” (NOPD Exh. 6(a) at 58:17). A few moments later, Officer Simmons tells Appellant that the next watch will have to “sit” on Mr. Knapp “because as soon as they hear that ... medical. Unless you have the right deputy up there.” (NOPD Exh. 4(b) at 1:50-59). After enduring Mr. Knapp’s racist rants, the Officers and prisoners eventually arrived at central lock-up where Mr. Knapp claims “you hit me once” and then invited Appellant to try to hit him again with Mr. Knapp’s handcuffs off. (NOPD Exh. 6(a) at 1:06:04-1:06:10).⁵ Appellant did not report his use of force during his shift nor at any time immediate after the end of his shift.

C. Aftermath and Investigation

The ranking officer on duty in the 8th District on the evening of September 30, 2015 was Sergeant Sam Dupre. He was about eight to ten feet away from Appellant and Mr. Knapp during the time Appellant struck Mr. Knapp. Sgt. Dupre claimed that he noticed Appellant make a gesture towards Mr. Knapp that Sgt. Dupre described as “iffing” or when someone feigns striking another.

⁴ A camera installed in the NOPD vehicle used to transport Mr. Knapp to central lock-up captured the video footage in evidence as “NOPD Exhibit 6A.” “Camera 2” shows the rear of the vehicle.

⁵ The vehicle’s recording equipment only captured the audio of this exchange as Appellant and Mr. Knapp had relocated to a location immediately within the central lock-up facility.

(Tr. v. 3 at 249:30250:6). As a result, Sgt. Dupre asked Appellant if Mr. Knapp was “okay” or words to that effect. *Id.* at 250:7-22. Later during his shift, Sgt. Dupre decided to review the BWC footage of Officer Moran and Officer Simmons. After viewing the footage from Officer Moran’s BWC, Sgt. Dupre noted that it did not include any interactions between Officer Moran and Mr. Knapp while Mr. Knapp was seated at the prisoner bench. He then retrieved Officer Simmons’s BWC footage and discovered Appellant’s use of force and contacted his supervising officer who in turn notified NOPD’s Force Investigation Team (hereinafter “FIT”). Members of the FIT are responsible for investigating all serious uses of force by NOPD Officers.

Sergeant John Helou served as a member of NOPD’s FIT at all times relevant to the instant appeal and was responsible for investigating Appellant’s apparent use of force. On October 6, 2015, Sgt. Helou directed Appellant to report to the FIT offices and complete a “use of force” statement. Appellant complied and the statement is in evidence as “NOPD Exhibit 8.”

In his use of force statement, Appellant described his initial slap of Mr. Knapp as a “push” and claimed that the reason he “pushed” Mr. Knapp’s face away from him was because he was “trying to create distance between [himself] and [Mr. Knapp], [Mr. Knapp] had also attempted to bite me.” (NOPD Exh. 8). Appellant goes on to describe the circumstances that led to his second strike to Mr. Knapp’s head; “As I was trying to convince [Mr. Knapp] to calm down, he acted as though he was going to spit on me. At that time, I used the back of my left hand and pushed [Mr. Knapp’s] head away from me towards the bench.” *Id.* Prior to completing his use of force statement, Appellant, through his attorney, requested to review all available video footage of the incident. NOPD investigators denied this request.

In addition to completing a use of force statement, Appellant also agreed to provide what was described in the record as a “criminal statement.”⁶ In this statement, Appellant admitted to making physical contact with Mr. Knapp, but again used words and phrases such as “pushed” and “turned him away from me” to describe his actions. (NOPD Exh. 11 at p. 3-4). Appellant also continued to insist that Mr. Knapp had appeared as if he were going to bite or spit at him. *Id.*

Included within Appellant’s criminal statement is the following exchange:

- **Investigator Question:** “We’re all right with the, the backhand, with the open hand. I agree with you for that one. What was the punch for?”
- **Appellant Response:** “I don’t know at what point I punched him. I honestly, I, I know when I went into him, again, everything happened fast and I just, I don’t know even at what point I punched this guy, honestly.”
- **Investigator Question:** All right. You said you didn’t punch him. Did you punch him or not?
- **Appellant Response:** “Well, you, you’re telling me I did. I mean, I don’t remember ever punching him or using my, my, a closed fist.

(NOPD Exh. 11 at p. 12).

After the Orleans Parish DA declined to pursue criminal charges against Appellant, Sgt. Helou initiated the administrative portion of the investigation and directed Appellant to submit to another interview. A transcript of Appellant’s administrative statement is in evidence as “NOPD Exhibit 12.” During his administrative interrogation, Appellant continued to assert that he had merely “pushed” Mr. Knapp and “redirected” Mr. Knapp’s face because Appellant believed that Mr. Knapp was going to bite him or spit at him. In his written statement, Appellant did not

⁶ On occasion, an investigation into an Officer’s misconduct will proceed on both an administrative and criminal track. While NOPD cannot compel an Officer to make a criminal statement – one which could be used against the Officer in a criminal trial, NOPD may compel a criminal statement. In this case, Appellant agreed to provide a criminal statement. NOPD did refer the matter to the Orleans Parish District Attorney’s Office for possible criminal prosecution, but the DA eventually screened the matter out and declined to pursue criminal charges.

equivocate regarding his actions and those attributed to Mr. Knapp. It was only when he was interviewed by NOPD investigators that he began hedging his statements.

During the course of his investigation, Sgt. Helou reviewed all available footage numerous times. When he compared the video footage to Appellant's statements, he saw troubling inconsistencies that he believed were purposeful attempts to deceive NOPD investigators. In particular, Sgt. Helou found Appellant's claims that Mr. Knapp appeared to be preparing to bite or spit at Appellant to be fabrications. He based this conclusion on the fact that Appellant made no attempt to withdraw from Mr. Knapp during their brief interaction. In fact, Appellant got closer to Mr. Knapp after the first blow and hovers over him with his face in close proximity to Mr. Knapp's. Sgt. Helou also found Appellant's choice of words in describing the physical contact to be misleading. Ultimately, Sgt. Helou recommended that NOPD substantiate all allegations of misconduct against Appellant.

Deputy Superintendent Paul Noel conducted the pre-termination hearing for Appellant on June 15, 2016. It was at the pre-termination hearing that Appellant was able to view the footage captured by Officer Simmons's BWC. Upon viewing the footage, Appellant agreed with Deputy Superintendent Noel that the physical contact looked like a "punch" and not a "push." (NOPD Exh. 17). But Appellant insisted that he believed that Mr. Knapp was going to bite him and/or spit at him.

Like Sgt. Helou, Deputy Superintendent Noel found Appellant's responses to be purposefully deceptive. As a preliminary matter, Deputy Superintendent Noel did not observe any reaction by Appellant that would suggest that Appellant was in any way concerned about being bit or spat upon by Mr. Knapp. (Tr. v. 4 at 52:9-22). He also believed that Appellant's use of the words "push" and "redirection" were a purposeful and gross mischaracterization of the contact he

made with Mr. Knapp's face. *Id.* at 165:20-166:7. Finally, from Deputy Superintendent Noel's perspective, a key exchange occurred during the course of the pre-termination hearing when he asked Appellant if he had ever struck someone on the job before:

Q: Have you struck individuals before, justified or unjustified, on the job?

A: No.

Q: Is this the first time?

A: Yes.

Q: And that doesn't stick out as a moment of something that you would remember? The first time you punched a man in the face?

A: Again it happened so fast.

(NOPD Exh. 17 at p. 17). Deputy Superintendent Noel simply did not believe that such a singular moment in Appellant's career would become a blur. Especially when other elements of the interaction were so clear in Appellant's memory.

Following the pre-termination hearing, Deputy Superintendent Noel recommended that the Superintendent terminate Appellant's employment due to a violation of NOPD's policy requiring honesty and truthfulness. NOPD Superintendent Michael Harrison agreed with the recommendation and issued a termination letter.

III. LEGAL STANDARD

An appointing authority may discipline an employee with permanent status in the classified service for sufficient cause. La. Con. Art. X, § 8(A). If an employee believes that an appointing authority issued discipline without sufficient cause, he/she may bring an appeal before this Commission. *Id.* It is well-settled that, in an appeal before the Commission pursuant to Article X, § 8(A) of the Louisiana Constitution, an Appointing Authority has the burden of proving, by a preponderance of the evidence; 1) the occurrence of the complained of activity, and 2) that the conduct complained of impaired the efficiency of the public service in which the appointing authority is engaged. *Gast v. Dep't of Police*, 2013-0781 (La. App. 4 Cir. 3/13/14), 137 So. 3d 731,

733 (La. Ct. App. 2014)(quoting *Cure v. Dep't of Police*, 2007-0166 (La. App. 4 Cir. 8/1/07), 964 So. 2d 1093, 1094 (La. Ct. App. 2007)). If the Commission finds that an appointing authority has met its initial burden and had sufficient cause to issue discipline, it must then determine if that discipline “was commensurate with the infraction.” *Abbott v. New Orleans Police Dep't*, 2014-0993 (La. App. 4 Cir. 2/11/15, 7); 165 So.3d 191, 197 (citing *Walters v. Dep't of Police of City of New Orleans*, 454 So.2d 106, 113 (La. 1984)). Thus, the analysis has three distinct steps with the appointing authority bearing the burden of proof at each step.

IV. ANALYSIS

In the termination notice issued to Appellant, there are five rule violations cited, but only one, Honesty and Truthfulness, served as a foundation for Appellant’s termination. For the reasons articulated below, the Commission finds that NOPD established that Appellant violated its rule regarding honesty and truthfulness. Such a finding renders an analysis of the other allegations moot since Appellant did not actually serve any unpaid suspension or receive any letters of reprimand. Nevertheless, the Commission will address Appellant’s excessive use of force since it clearly factored into the intent necessary to establish a violation of NOPD’s Honesty and Truthfulness rule.

A. Occurrence of the Complained of Misconduct

1. *Unauthorized Use of Force*

NOPD’s use of force policy prohibits Officer from using or directing “unjustifiable physical abuse, violence, force or intimidation against any person.” (H.E. Exh. 1). Among the factors that NOPD uses to determine if an Officer’s use of force was reasonable are; whether the subject poses a threat to himself or others, the degree to which the subject has been effectively detained, the potential for injury to the subject or others, and the risk of escape. (NOPD Exh. 7).

NOPD classifies any strike to the head as a “Level 3” use of force regardless of whether or not the subject sustains an injury. *Id.* There is no dispute that Appellant struck Mr. Knapp twice in the head while Mr. Knapp was handcuffed to a bench in the 8th District Station. At the time Appellant struck Mr. Knapp, Mr. Knapp was not posing any immediate physical threat to himself or others. And, Appellant himself admitted that he had other options available other than striking Mr. Knapp in the head. As a result of his excessive use of force, Appellant surely recognized that he faced serious discipline up to and including termination.

The Commission therefore finds that Appellant violated NOPD’s use of force policy when he struck Mr. Knapp twice in the head on September 30, 2015.

2. *Appellant’s Violation of NOPD Rule 2: Moral Conduct, Paragraph 3: Honesty and Truthfulness*

NOPD has in place rules that govern almost every aspect of an Officer’s conduct on and off duty. The need for such rules derives from the enormous power and responsibilities that come with being a law enforcement officer in a large metropolitan center. One such rule requires that Officers be forthright and honest in their daily interactions with residents, fellow officers, supervisors, and even arrested subjects:

Employees are required to be honest and truthful at all times in their spoken, written, or electronic communications. Truthfulness shall apply when an employee makes a materially false statement **with the intent to deceive**. A statement is material when, irrespective of its admissibility under the rules of evidence, it could have affected the course or outcome of an investigation or an official proceeding, whether under oath or not, in all matters and official investigations relating to the scope of their employment and operation of the Department, as follows:

- (a) employees shall truthfully state the facts in any oral, written, or electronic communication;
- (b) employees shall not willfully or negligently make any false, misleading, or incorrect oral, written or electronic communication;

- (c) employees shall not willfully or negligently without relevant information of which they have knowledge, from any oral, written, or electronic communication;

Employees shall truthfully answer all questions directed to them on the order of the Superintendent of Police, the Superintendent's designee, a superior officer, or any judicial, departmental, or other official investigative body.

(H.E. Exh. 1)(emphasis added).

In order for the Commission to find that Appellant violated the above-cited rule, it must find that Appellant not only made a materially false statement, but did so with the intent to deceive NOPD investigators.⁷ NOPD identified two general categories of lies issued by Appellant during the course of the investigation into his misconduct. First were the words Appellant used to describe his physical contact with Mr. Knapp and the second were Mr. Knapp's alleged behaviors that led to the head strikes. Deputy Superintendent Noel asserted that Appellant was deliberately deceptive when he described his actions as "pushing" and "redirecting." NOPD also claimed that the behavior Appellant attributed to Mr. Knapp (i.e., preparing to bite or spit at Appellant) were thinly veiled attempts to invent behavior that would justify Appellant's contact with Mr. Knapp's head and allow Appellant to avoid serious discipline. For his part, Appellant claimed that the interaction with Mr. Knapp happened very fast and he did not have a full recollection of what occurred.

In a prior Commission case, *Vara/Wheeler v. NOPD*, Nos. 8106 & 8109 (December 9, 2015), *aff'd Vara & Wheeler v. Department of Police*, 2016-CA-0036 (La. 4th Cir., June 29, 2016), the Commission found that two Officers had intentionally misled supervisors and investigators regarding their use of force. The Officers in *Vara/Wheeler* claimed that use of force occurred very

⁷ The Parties did not address whether or not Appellant's statements regarding his use of force were "material." NOPD's policy defines "a material statement" as a statement that "could have affected the course or outcome of an investigation or an official proceeding." Appellant's statements regarding his use of force and Mr. Knapp's alleged actions were the focus of the FIT's investigation and thus clearly "material" as defined by NOPD.

quickly and they had obstructed perceptions of the event due to low light, stress and physical obstacles. Nevertheless, the Officers' reports contained several demonstrably false but detailed statements that suggested the Officers were particularly focused on the subject's hands. This undercut the Officers' claims that the details of the event were flawed or incomplete.

In the case now before the Commission, Appellant provided NOPD investigators with specific details regarding Mr. Knapp's actions and was deliberate in his description of his own actions as being "pushes" and "redirections." Upon viewing the video evidence, the undersigned Commissioners do not believe that a reasonable person in Appellant's situation would describe his two strikes to Mr. Knapp's head as anything but a "slap" and a "punch." The undersigned are even more concerned about Appellant's claims regarding Mr. Knapp's behavior. We agree with Sgt. Helou and Deputy Superintendent Noel that Mr. Knapp does not appear to make any movement or gesture suggesting he was about to bite or spit on Appellant. Furthermore, Appellant's own actions suggest he was not concerned about being bit or spat upon since he got extremely close to Mr. Knapp, and at one point placed his face in very close proximity to Mr. Knapp's. This was not the behavior of someone who suspected he was about to be spit at.

Another contributing factor to the Commission's finding was Appellant's failure to immediately notify his supervisor of the force he had used on Mr. Knapp. Both Officer Simmons and Appellant clearly discussed Mr. Knapp's claim that he had been struck and hoped that "the right deputy" would be on duty at central lock-up otherwise Mr. Knapp may have been forced to submit to a medical examination. This clearly suggests that Appellant recognized the seriousness of the situation and attempted to avoid responsibility for his action by keeping it to himself.

Appellant points out that he did not deny making physical contact with Mr. Knapp and ultimately agreed with Deputy Superintendent Noel that the video footage showed him "punching"

Mr. Knapp. He made this admission after finally reviewing the footage from Officer Simmons's BWC. Appellant and his attorney took issue with NOPD's policy that prohibited Appellant from reviewing any footage other than the footage captured by his own BWC. The Commission takes no position on NOPD's policy but observes that it does serve as a check on whether an Officer will be forthright regarding a particular incident.

Based upon the foregoing, the Commission finds that it is more likely than not that Appellant deliberately misled NOPD investigators regarding his use of force on Mr. Knapp in an attempt to avoid serious discipline.

B. Impact on NOPD's Efficient Operations

This Commission has repeatedly observed that official reports generated by Officers in connection with arrests, uses of force or other interactions with citizens often provide the only insight into such incidents. In the interest of accountability, transparency and public trust, it is essential that these records accurately reflect what happened, regardless of whether or not the Officers involved are shown in a positive light. If Officers purposefully misrepresent material in these reports, the essential role these reports play is drastically compromised. Therefore, the Commission finds that NOPD has a vested interest in ensuring that Officers commit to the highest level of truthfulness in making official reports and severely disciplining those Officer who fail to do so.

Had Appellant simply acknowledged his use of force, and avoided any attempt to minimize its severity or fabricate details to justify it, NOPD would not have pursued termination. Unfortunately, as is often the case, the attempt to cover-up the offense was worse than the underlying misconduct.

C. Was the Discipline Commensurate with Appellant's Offense

In conducting its analysis, the Commission must determine if Appellant's termination was "commensurate with the dereliction;" otherwise, the discipline would be "arbitrary and capricious." *Waguespack v. Dep't of Police*, 2012-1691 (La. App. 4 Cir. 6/26/13, 5); 119 So.3d 976, 978 (citing *Staehle v. Dept. of Police*, 98-0216 (La. App. 4 Cir. 11/18/98), 723 So.2d 1031, 1033).

As noted above, in order to violate NOPD's policy requiring honesty and truthfulness, an Officer must make a false statement regarding a material fact with the intent to deceive. NOPD views violations of this policy as a cardinal sin. Deputy Superintendent Noel represented that, a substantiated allegation of untruthfulness against an Officer renders such an Officer "unemployable." In support of this assertion, NOPD relies upon *Giglio v. United States*, 405 U.S. 150, 92 S.Ct. 763, 31 L.Ed.2d 104 (1972) and *Brady v. Maryland*, 373 U.S. 83, 87, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963). In *Brady*, the U.S. Supreme Court found that a prosecutor suppressed evidence favorable to a criminal defendant's defense. Further, such evidence was "material either to guilt or to punishment." 373 U.S. at 87. As a result, the Court found that the State had violated the criminal defendant's due process rights in violation of the Fourteenth Amendment. *Id.* Following *Brady*, the Court held in *Giglio* that, "[w]hen the reliability of a given witness may well be determinative of guilt or innocence, nondisclosure of evidence affecting [the witness's] credibility falls within [the rule established by Brady]." 405 U.S. at 154 (internal citations omitted).

NOPD's well-founded concern is that courts would view any substantiated allegations of misconduct against an Officer involving truthfulness or lying as directly affecting an Officer's credibility. Thus, Supreme Court precedent would compel prosecutors to disclose such misconduct to criminal defendants in any matter in which the Officer in question was involved.

Upon such a disclosure, any competent defense counsel would likely use such information to undermine the credibility of the Officer and call into question the integrity of the criminal investigation itself. The critical upshot of such misconduct then is that NOPD could not reasonably rely upon Officer Moran to prepare police reports, swear to affidavits or testify in criminal matters.

This lends credence to Deputy Superintendent Noel's contention that Officers who violate the Honesty and Truthfulness are unemployable.

Based upon the record before us, the undersigned Commissioners find that termination was an appropriate level of discipline given the nature of Appellant's misconduct.

V. CONCLUSION

Describing Mr. Knapp's drunken rant as racist does not come close to conveying the level of depravity and venom spewing from his mouth. It is chilling to hear the casual ease with which Mr. Knapp discusses his racist theories and positions. It is a tragedy that this man's actions led to the discipline of officers who served the people of New Orleans. Many individuals would have likely welcomed an opportunity to extract some vigilante justice on Mr. Knapp, but that was not the role of NOPD Officers. Officers are in a unique position of authority and power and must rise above mere insults, regardless of how vile. It is a thankless part of the job but an essential one. On September 30, 2015, Officer Moran was not at the top of his game and gave into his impulse to give Mr. Knapp a smack in the face for his horrid conduct. Unfortunately, Officer Moran then attempted to obfuscate the NOPD's investigation. Had Officer Moran been forthright about his actions, he likely would not have been terminated and would have instead faced a long-term suspension and some counseling. Because Officer Moran sought to minimize the damage caused by his poor choices, his career with NOPD is cut short and New Orleans loses a promising young officer.

As a result of the above findings of fact and law, the Commission hereby DENIES
Appellant's appeal.

Judgment rendered this 28th day of February, 2018.

CITY OF NEW ORLEANS CIVIL SERVICE COMMISSION

WRITER



TANIA TETLOW, COMMISSIONER

2/20/18

DATE

CONCUR



MICHELLE D. CRAIG, CHAIRPERSON

2/27/2018

DATE



RONALD P. McCLAIN, VICE-CHAIRMAN

2/21/18

DATE